



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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July 6, 2006

✓ DWIGHT PELZ, CHAIR
WASHINGTON STATE DEMOCRATS
PO BOX 4027
SEATTLE WA 98104-0027

RICHARD C. KELLEY
6312 18TH AVE NE
SEATTLE WA 98115

Subject: Complaints Filed Against Grangers for Citizens to Preserve the Blanket Primary,
Citizens for Preserving Voter Choice, and the Washington State Grange – PDC Case #04-450

Dear Mr. Pelz and Mr. Kelley:

The Public Disclosure Commission (PDC) staff has completed its investigation of complaints received on April 21, 2004 from Paul Berendt, who at the time was Chair of the Washington State Democrats, and on June 24, 2004 from Richard Kelley, alleging violations of RCW 42.17 by Grangers for Citizens to Preserve the Blanket Primary, Citizens for Preserving Voter Choice, and the Washington State Grange.

PDC staff reviewed the allegations in light of the following statutes:

RCW 42.17.020 defines a political committee as “any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.”

RCW 42.17.040 requires political committees to file a registration statement with the PDC within two weeks of formation or within two weeks of having the expectation of raising or spending funds to support or oppose a candidate for office or a ballot proposition.

RCW 42.17.080 and .090 require political committees to file timely, accurate reports of contributions and expenditures.

RCW 42.17.125 prohibits the transfer of a political committee's funds to the personal account of a treasurer or other individual, or the personal use of campaign funds by such an individual, except for purposes that are directly related to the committee's campaign.

RCW 42.17.120 requires that no contribution be made in a fictitious name, anonymously, or by one person through an agent, relative, or other person so as to conceal the identity of the source of the contribution.

RCW 42.17.730(1) states that a person, other than an individual, may not be an intermediary or an agent for a contribution.

Allegations Against Grangers for Citizens to Preserve the Blanket Primary

The complaints alleged that Grangers for Citizens to Preserve the Blanket Primary (GFCBPB) failed to timely file reports of its activities from February 1, 2003 through August 31, 2004. In addition, Mr. Kelley alleged that GFCBPB failed to properly report all contributions made by the Washington State Grange. Finally, Mr. Berendt alleged that GFCBPB made payments benefiting the Washington State Grange that were not directly related to the committee's campaign in support of I-751. We found that:

- On January 5, 2001, GFCBPB filed a committee registration form to support I-751, a proposed statewide initiative. However, the committee submitted no signatures to the Secretary of State by July 6, 2001, the official deadline to qualify the issue for the 2001 ballot. Rather, the supporters of the initiative chose to work toward the legal defense of the blanket primary in state and federal court.
- GFCBPB reported contribution and expenditure activity from February 12, 2001 through January 31, 2003, at or near the time it occurred. Because the committee's ballot issue was defunct by the end of July 2001, GFCBPB was in a position to report on the disposition of surplus funds and file a final report to the PDC at that time.
- Without reporting the disposition of surplus funds, GFCBPB continued to receive funds and make expenditures for its legal defense of the blanket primary. The committee's expenses included \$20,752 for management of the legal defense effort in state and federal court, \$17,674 for bookkeeping and fundraising services, and \$211,990 for legal services defending the blanket primary in state and federal court. A portion of the legal services were also related to drafting the "People's Choice Initiative" (Initiative 872). The committee reported this activity on August 23 and September 13, 2004.
- In early 2003, Toni McKinley, treasurer of GFCBPB, contacted PDC staff and was told that the group's legal defense activities were not in support of or in opposition to a ballot proposition since I-751 did not qualify for the 2001 ballot, and that legal defense expenditures are generally not reportable.

GFCBPB reported its activity in support of I-751 in a substantially timely manner. In addition, although all contributions to and expenditures by a political committee are reportable, had the committee chosen a different vehicle for the legal defense effort, these receipts would not be required to be disclosed in any manner. Thus, no enforcement regarding the GFCBPB's late reporting is warranted. In addition, the payments for legal and management services following the end of its I-751 campaign do not constitute a prohibited personal use of contributions.

Allegations concerning Citizens for Preserving Voter Choice

Mr. Berendt alleged that Citizens for Preserving Voter Choice (CPVC) failed to timely register as a political committee on PDC form C-1pc and failed to timely file C-3 and C-4 reports disclosing its contribution and expenditure activity supporting Initiative 872, a statewide ballot proposition on the 2004 ballot. The contributions that were allegedly reported late included contributions from the Washington State Grange in the form of the paid staff time of David Burr, Don Whiting, and Dave Anderson. Mr. Kelley also alleged that CPVC failed to timely disclose contribution and expenditure activity, including in-kind contributions from the Washington State Grange, and debts and obligations to a paid signature gathering firm. Finally, Mr. Kelley alleged that the registration statement filed by CPVC failed to disclose its affiliation with the Washington State Grange. We found that:

- CPVC received an in-kind contribution from GFCBPB for the legal services of James Johnson paid for on January 28, 2004. The services were largely related to drafting I-872. CPVC was required to file a C-1pc within two weeks of receiving the services and C-4 reports disclosing the services, estimated at \$6,625. The C-1pc was filed on April 13, 2004. The in-kind contribution was not reported.
- Although CPVC filed I-872 with the Office of the Secretary of State on January 8, 2004, the committee states that it saw the initiative as a last resort in the event neither of two desired outcomes were realized: a ruling in federal court endorsing the constitutionality of the blanket primary, or new legislation enacting a qualifying primary in Washington State. The committee's treasurer states that the committee was reluctant to commit the members of the Grange to an initiative campaign when the possibility remained that they might not actively pursue the initiative, as happened with the I-751 campaign.
- David Burr issued a press release regarding I-872 on behalf of the Washington State Grange on January 8, 2004. However, this news release explicitly described I-872 as a last resort, and stated that if the U.S. Supreme Court agreed to review a lower court's decision regarding the blanket primary, *"everything would be on hold until [the following] year."* In addition, Mr. Burr has stated that the Grange also held back support for I-872 because of the potential that Governor Locke might sign ESB 6453, which in part would have authorized a "Louisiana-style" primary similar to the blanket primary. On April 1, 2004, Governor Locke issued a partial veto of ESB 6453 that removed the provisions concerning the "Louisiana-

style” primary. There was no evidence that Mr. Burr’s work campaigning for I-872 began before late March or early April of 2004, immediately preceding this veto. The contributions from the Washington State Grange in the form of Mr. Burr’s paid time were filed in a substantially timely manner by CPVC beginning on May 10, 2004.

- CPVC’s treasurer stated that Donald Whiting was not compensated for his work on the I-872 campaign, and that he “*did all of this for free.*” Mr. Whiting is self-employed as a technology consultant, and was not an employee of the Washington State Grange. The work he performed for CPVC was not a part of his normal professional services, and constituted volunteer activity. Thus, although CPVC disclosed \$2,811 in in-kind contributions from Mr. Whiting between April 30 and August 31, 2004, there was no requirement to report an in-kind contribution for the estimated value of his services.
- David Anderson was hired by the Washington State Grange in December 2003 to assist Toni McKinley and to perform other member services. Ms. McKinley stated that Mr. Anderson was presented as a campaign manager for the newly created I-872 campaign only as a lobbying tactic, in order to demonstrate the lengths to which the Grange would go to support the blanket primary. She stated that although he was eventually given the title of West Side Campaign Manager for the I-872 campaign, he did not in fact assume that position, and instead worked throughout the campaign assisting Ms. McKinley with the committee’s bookkeeping. Mr. Anderson’s paid time working on I-872 were disclosed in a substantially timely manner beginning May 10, 2004.
- No evidence was found or provided by complainants that CPVC received in-kind contributions in the form of the paid time of Washington State Grange staff members throughout the winter of 2004. Two I-872 strategy meetings occurred in January and February 2004, and involved Grange employees Terry Hunt and Toni McKinley, but no evidence was found that the meetings took place during the work day.
- CPVC provided draft copies of the I-872 signature petition to approximately three state legislators in early March of 2004. The draft copies, the primary purpose of which was for internal review, were printed on a Washington State Grange office printer. No evidence was found that CPVC received signature petitions for distribution before late March of 2004, or distributed the petitions for signatures before April 1, 2004.
- CPVC placed an order for 15,000 signature petitions on March 17, 2004, and was required to file a C-4 report on April 10, 2004 to disclose this order. This activity was disclosed on May 10, 2004 as an in-kind contribution from the Washington State Grange.
- Following Governor Locke’s partial veto of ESB 6453 on April 1, 2004, CPVC disclosed in-kind contributions made by the Washington State Grange beginning

on April 30, 2004 for office space and related expenses devoted to I-872 activities. These in-kind contributions were reported in a substantially timely manner.

- An in-kind contribution from the Washington State Grange on April 30, 2004 valued at \$22,898 for radio ads was timely disclosed by CPVC on a C-4 report filed May 10, 2004.
- No evidence was submitted or found to substantiate Mr. Kelley's allegation that CPVC did not timely report an in-kind contribution from the Grange in the form of a Web site discussing the blanket primary,
- The Grange newsletter published ten ads soliciting support for I-872 over a period of six months. According to the display advertising rates offered in the publication, the value of these ten ads was approximately \$1,000. An in-kind contribution for the value of the ads was not reported by CPVC.
- No evidence was submitted or found to substantiate Mr. Kelley's allegation that CPVC had debt and obligations to a signature gathering firm that were not timely disclosed.
- Line 2 of the C-1pc does not require reporting entities other than related or affiliated political committees. Thus, CPVC had no obligation to list the Washington State Grange as an affiliated political committee.

CPVC did not begin its campaign in support of I-872 until late March or early April of 2004. Thus, the committee's contribution and expenditure activity in support of the initiative was disclosed in a substantially timely manner and no enforcement is warranted. CPVC was required to report an in-kind contribution from GFCBPB for the services of James Johnson in drafting the initiative. However, payment for these services was disclosed by GFCBPB as legal defense activity. Thus, no enforcement is warranted for CPVC's failure to disclose the activity a second time. CPVC was required to disclose \$1,000 in in-kind contributions from the Grange in the form of political advertisements published in the organization's newsletter. However, given that the great majority of monetary and in-kind contributions from the Grange were timely reported by CPVC, no enforcement is warranted. The Grange will be reminded to be in timely contact with committees it supports, to insure that in-kind contributions are timely reported by the benefiting committees.

Allegations concerning the Washington State Grange

Mr. Kelley alleged that the Grange concealed the sources of contributions to the political committees it supported, and illegally acted as an intermediary or agent for contributions to the CPVC committee. We found that:

- The www.blanketprimary.org and www.I872.org Web sites contained two messages that stated, "*Privacy notice: The Grange will not sell or otherwise make available your email address to any third party,*" and "*the Grange will not*

give or sell your information to anyone.” Terry Hunt stated that the messages were referring to demographic and name information provided on petitions, and e-mail addresses entered by persons interested in receiving updates on I-872 campaign activity, and that the messages were not intended to promise that reportable contribution information would be excluded on the PDC campaign finance disclosure reports.

- CPVC’s web site at www.I872.org, while initially instructing viewers to mail initiative contributions to the Grange, was edited by mid-October 2004 to clarify that donations to support I-872 should be made to CPVC. The mailing address for CPVC and the Grange are the same, and the treasurer of CPVC, Toni McKinley, is a Grange employee. Terry Hunt stated that all checks received at the Grange’s address were reviewed to determine whether the donation was intended to go to the Grange or to support I-872. Ms. McKinley stated that when she received checks indicating they were intended to support I-872, she made copies of the checks and deposited them in the CPVC account.
- The Grange’s newsletter ran four advertisements soliciting readers to contribute one dollar to support the I-872 effort. The advertisement included a remit section referencing I-872, and stated the following: *“Is your freedom worth a buck? If so, join the Grange’s dollar campaign today... We are making history with the People’s Choice Initiative, just like we did in 1934...Send your dollar to Washington State Grange c/o Blanket Primary[.]”* A review of CPVC’s C-3 reports discloses eleven \$1.00 contributions made to the committee. There is no evidence that other \$1.00 contributions were received.

Toni McKinley, as the treasurer of CPVC, was authorized to accept contributions to the political committee in care of the committee’s mailing address (which was also the address of the Grange), and in doing so did not make the Grange an intermediary for contributions. Other than the Grange’s “dollar campaign,” which generated \$1 from 11 individuals that was passed on to CPVC, we found no evidence that the Grange acted to solicit contributions for a political committee, that it acted as an intermediary or to conceal the identities of contributors. The limited activity involved in this “dollar campaign” does not warrant enforcement action.

Mr. Kelley further alleged that that the Washington State Grange is a political committee due to the solicitations in support of I-872 that appeared on the Grange’s Web site and in the organization’s newsletter. We found that:

- The Grange’s Web site homepage initially contained an electronic banner that flashed two messages. The first message stated, *“Preserve your Voting Rights.”* It then changed to *“Join the Grange.”* A viewer clicking on the banner was linked to the web pages to become a Washington State Grange member. Terry Hunt and Toni McKinley stated that the Washington State Grange was not

soliciting contributions to the initiative campaign through this banner, but was attempting to gain members by advertising an issue that the Grange championed.

- Although they expressed strong support for independent voting rights, the members of the Grange did not request or authorize a statewide initiative to protect the blanket primary.
- The members of the Grange did not request that their dues be used to support the initiatives, and the Grange did not transfer a percentage of each member's dues into the account of its political committees.
- There was no line item in the Washington State Grange's annual budget to support a statewide initiative. The funds contributed to the I-751 and I-872 campaigns came from a bank account that is separate from the Grange's general fund, out of which normal budget items are paid. Each year that the Grange has satisfied its budget expenses and still has revenue left, this separate bank account receives some of the excess funds. Terry Hunt, president of the Grange, authorized expenditures out of this fund to support the two initiatives, and was not required to consult with the Grange's membership in doing so.

In *State ex rel. Evergreen Freedom Foundation v. Washington Education Association* (2002), the Washington Court of Appeals held that an organization may be a "receiver of contributions," and thus a political committee, if the organization's members are called upon to make payments that are segregated for political purposes and the members know, or reasonably should know, of this political use. During the period in question, only \$11 of the Grange's funds were set aside with the knowledge of the contributors for use in supporting or opposing political candidates or ballot propositions. No evidence was found that any other funds were set aside with the knowledge of the members for election-related purposes. While the Grange championed the issues behind I-751 and I-872, it did not become a "receiver of contributions" through its membership receipts and other income.

In addition to the "receiver of contributions" test, the Court of Appeals' second test of an organization's status as a political committee is whether the organization had electoral political activity as one of its primary purposes during a given period. The court held that "an appropriate framework for determining whether electoral political activity is one of an organization's primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity was a primary means of achieving the stated goals and mission during the period in question." Specifically, the court recommended an examination of "(1) the content of the stated goals and mission of the organization; (2) whether the organization's actions further its stated goals and mission; (3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the organization uses means other than electoral political activity to achieve its stated goals and mission."

The Washington State Grange is a farm-based fraternal organization founded in 1889. Its stated interests include land use policy, public education, publicly-owned or controlled utilities, health care access, and public safety. According to the Grange's Web site, the organization conducts a broad range of activities, including lobbying at the state and federal levels, deaf awareness activities, academic scholarship programs, youth activities, travel programs and other member services. The stated goals and mission of the Grange clearly extend far beyond the preservation of the blanket primary. The approval of I-751 and I-872 by voters would not have substantially achieved the organization's diverse goals. Many of the Grange's activities do not address the blanket primary, or involve electoral political activity at all. It thus does not appear that during the period in question a primary purpose of the Grange was to support or oppose candidates or ballot measures.

Mr. Berendt alleged that the Washington State Grange is a political committee as a result of using a large percentage of its membership dues to support I-751 and I-872. We found that:

- The Washington State Grange made combined contributions of \$1,066,288 to the I-751 and I-872 committees over a period of four years.
- The Grange has annual income of over \$1,000,000 from membership dues and insurance premiums, and also receives income from renting offices at its headquarters.
- The organization's expenditures in support of I-751 and I-872 equaled approximately 27% of its annual revenue.

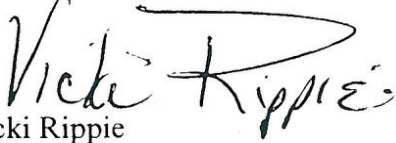
The Court of Appeals held that the percentage of an organization's expenditures for electoral political activity, or the amount so spent, need not be a determining factor in deciding whether the organization is a political committee. Rather, a sufficient test may be whether the organization has electoral political activity as one of its primary purposes, and whether it receives political contributions as defined in the Public Disclosure Act. After applying the Court's primary purpose test, we found that electoral political activity was not a primary purpose of the Grange during the period in question, and that the organization was not a receiver of contributions as contemplated by the Court. Thus, the Grange was not a political committee during the period in question.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against Grangers for Citizens to Preserve the Blanket Primary, Citizens for Preserving Voter Choice, and the Washington State Grange.

Dwight Pelz and Richard Kelley
PDC Case #04-450
Page – 9 –

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360)
664-8853 or toll free at 1-877-601-2828.

Sincerely,

A handwritten signature in black ink that reads "Vicki Rippie". The signature is written in a cursive style with a large, sweeping loop for the letter 'V' and a long, horizontal stroke for the 'R'.

Vicki Rippie
Executive Director